

## PLANNING BOARD MINUTES

A hearing before the Village of Hudson Falls Planning Board was held on December 27, 2022, at 6:00 p.m.

Attendees: David Hutchinson, Chairman  
Joelle Timms, Board Member  
Diane Santa Croce, Board Member  
Lynn Leland, Board Member  
Deborah Breeyear, Board Member  
William Nikas, Village Attorney

Absent: Robyn Cronin, Board Member  
Richard Wagner, Board Member

Public Present: 4 members of public present

Chairman Hutchinson called the meeting to order at 6:00 pm.

The first item on the agenda is a Site Plan Review application submitted by Russo Developers, 12 LaBarge Street, Hudson Falls, NY 12839 to subdivide the property known as 11-13 Fourth Street, Hudson Falls, NY 12839.

Chairman Hutchinson opened the floor to Mr. Russo to explain his project to the board.

Stephanie Bitter, Atty. with Bartlett, Pontiff, Stewart & Rhodes introduced herself as well as Brandon Ferguson with Environmental Design Partnership as representatives for Russo Developers. Ms. Bitter informed the board the property is a 1.24-acre lot located at 11-13 Fourth Street. She is aware there is a history with the property, and previously in 2015 it was proposed for a five-lot subdivision. Russo's developers have purchased it and they are looking to do a two-lot subdivision. Currently on the lot exists a new construction home and the Russo's would like to construct one other home as well as on the northern corner near Fourth and King Ave. there will be a stormwater infiltration as well as infiltration in the front, both of which would be installed by the developer and then conveyed for ownership by the property owner with a maintenance agreement with the village to make sure it is controlled and maintained for the purposes it was intended. The subdivision plan proposed meets the bulk standards of the zoning districts they are in. In addition to the subdivision plan itself, because of the historical drainage concerns that have been described throughout the years, she explained they have provided to the board a stormwater design report done in September of this year. These plans were reviewed by the Village Engineer, Jarrett Engineers and their report was changed to address as many of his concerns as they could. Ms. Bitter is aware there was an August 2022 site visit with her applicants and the Engineer for the Village of Hudson Falls, Thomas Jarrett, Mike Fiorillo, Supt. Of Public Works for the Village of Hudson Falls, Joe Patricke, acting Code Enforcement officer of the Village of Hudson Falls as well as Mr. Ferguson with EDP. Ms. Bitter asked Brandon Ferguson of EDP, to describe their drawing and plan for the stormwater management subdivision to the board.

Mr. Ferguson introduced himself to the board and stated when he first got involved with this project it was planned to do a three-lot subdivision but after the August meeting mentioned above it was determined to change the plan to a two-lot subdivision with a storm water management area in order to assist with the drainage issues. Mr. Ferguson reviewed the drawing/plan with the board explaining where the existing home is, where the new home would be constructed and where the stormwater management area would be. He provided a drainage map for the board to review and explained how the water should run and the plan for the drainage area. He stated this is a typical design standard used by DEC to evaluate for stormwater management. A discussion ensued with Mr. Ferguson explaining the stormwater management plan they are proposing. Mr. Ferguson stated they reviewed these plans with Village Engineer, Thomas Jarrett and he still had some concerns. EDP has addressed as many of the concerns as they could.

Chairman Hutchinson asked for a motion to open the meeting to public hearing,

Upon motion made by Board Member Breeyear, seconded by Board Member Santa Croce, the meeting was opened to public comment.

Brian Parsons of 45 King Ave. lives adjacent to the lot being discussed. He feels confident this proposal is the best plan that has been presented thus far for that lot and the water issues that are currently there.

Mark Gaulin of 12 Third Street stated that his property would be affected the most by this plan. All the water this past Spring was seen by everyone, and he would like to know where all that water will go once they start doing a project in there and adding a new home. Mr. Gaulin asked if his home were to get flooded, who would be responsible for that? Board Member Timms asked if he had water on his property. Mr. Gaulin stated they have a sump pump, but they do not have standing water in their yard. Mr. Gaulin stated there has been water problems in that area in the past. Chairman Hutchinson explained to Mr. Gaulin that what Mr. Ferguson from EDP is proposing is that their plan will not change the amount of water collecting there or how that land treats the water as it does now. A brief discussion ensued. Village Attorney Nikas addressed Mr. Gaulin's question as to who would be responsible if this project caused his property to flood. Attorney Nikas informed Mr. Gaulin that it would be a civil lawsuit at that time. Mr. Gaulin stated that the weather is changing, and we seem to get heavier and heavier rain all the time and he is concerned about where all this water is supposed to go once another home is added. A brief discussion ensued.

Mr. Gaulin asked if they plan to take down all the trees on the property or will they be leaving some as a buffer. Chairman Hutchinson stated as it appears in the comments from the Village engineer that he suggested in addition to the buffer that the open area has some more plantings. He is uncertain as to whether the applicant plans to entertain that suggestion or not.

Sue Gaulin of 12 Third Street addressed the board, pointing to the Google Maps of the property and asking where all the water will be going, will it sit there or go into the sewers. Mr. Ferguson and Chairman Hutchinson explained to her that area is where the stormwater section would be, the water would sit in that area and is meant to infiltrate over time. A brief discussion ensued as to where the new home would be as well as where the water would be directed to.

Ed Russo of Russo Developers informed the board their company is a local company and uses local companies to do work on their projects. Mr. Russo stated they are not here to push people from their homes or make the water problem worse than what it is. The water will still be there, but it will be in a better spot. The plan that they are proposing through their engineer, makes the area better than it currently is and he is open to speak to anyone in the public about it. Mr. Gaulin asked him what type of home they are planning on putting there. Mr. Russo stated it would be similar to the one they currently built on that lot, or it may be a raised ranch on a slab. Mr. Russo stated they are not at the stage to make a decision on the type of home yet. They do plan to take down the old trees that are there and to plant 4 or 5 red maples or some other type of tree in their place.

Mike Fiorillo, Superintendent of Public Works for the Village of Hudson Falls was asked by Chairman Hutchinson to speak about his concerns regarding this project. Mr. Fiorillo states he agrees their proposal does not increase the amount of water that is there, however, he would like to make the board aware of the issues that are there. In an answer to Mr. Gaulin as to who is going to get the call when the flooding does occur, he will be the one getting those calls. The whole area from 2<sup>nd</sup> street to 7<sup>th</sup> street, drains to Fourth Street which is basically "the bottom of the bowl". It is a major project if/when the system proposed fails as this is the place all the water goes to and there is no outlet for it. Third Street sits lower in their backyards and the water will go across the lines into those yards. Once they build a house, they will bring fill in to support the foundation, the existing pond (pool of water) seen in the photos will have less area to deal with and will be pushed towards King Ave. The building of the new home will take up that space and force the water to a smaller area. Board Member Timms asked if Supt. Fiorillo had concerns of them building a second home in that location and Mr. Fiorillo replied he does. He knows as it is, it is deep enough so that water does not currently go up over the road and become an ice slick, but will we be able to say that after another home is built there and if not, what is the solution after? A brief discussion ensued.

Village Attorney Nikas passed out a packet to the board with emails and reports from Village Engineer, Tom Jarrett and had numbered areas for further reference. Attorney Nikas stated that the background on this project dates back to 2014, when Ken Martin, Engineer evaluated the full area and found problems not only at this location but all the way along Fourth and King Ave. Mr. Martin had contingencies that we found the owner at the time could not comply with. Currently we have referred this proposal to Village Engineer Tom Jarrett and he has been working with Brandon Ferguson for some time now and what we have always assumed is that we are not qualified as a board to approve a project such as this, so we rely on our engineer to approve it. Attorney Nikas referenced 'Page 5' of his handout, in which he submitted a request to Mr. Jarrett for his review of EDP's plan at that time. Attorney Nikas reviewed Mr. Jarrett's responses and concerns to EDP's points with the board, Supt. Fiorillo and the applicants. Mr. Jarrett had requested a contingency plan be submitted as to if and when flooding should occur. To Mr. Nikas's knowledge, no such contingency plan has been submitted. Mr. Nikas stated number five would be the most

problematic answer as EDP suggests that Village ownership would be the best option as the Village has the equipment to maintain this basin. Mr. Jarrett is of the impression the Village is not willing to take over ownership or responsibility for maintenance of a stormwater management area and lot. Mr. Jarrett suggested please review other options for ownership and maintenance. Attorney Nikas submitted this information to the Village Board for their response and they passed a resolution that they do not want to take ownership or responsibility for this stormwater plan. A discussion ensued involving Attorney Bitter asking about the village having an easement, Supt. Fiorillo stating the village taxpayers should not have to take on the cost of this and Attorney Nikas explaining former engineer's Ken Martin's findings and the village's current engineer, Tom Jarrett's findings. Attorney Nikas stated that the answer is, if they can convince the Village Engineer, Tom Jarrett, that this is a viable and acceptable plan then the Planning Board could move forward with an informed decision.

More discussion took place regarding the comments and suggestions from Mr. Jarrett, Village Engineer with Brandon Ferguson, Engineer for EDP, discussing the areas they could address, again stating they addressed as many of the concerns as they could as well as the fact that NYS DEC does not require post construction stormwater management on a parcel under 5 acres that meets contributing factors. Attorney Nikas pointed out that it was determined on October 5<sup>th</sup> that Mr. Jarrett updated that he would not sign off on the proposed plan based on the history of the project. This site has flooded in the past and it could be expected to potentially flood even more in the future with new impervious areas to be constructed. The site being proposed for stormwater management may certainly help but may not prevent flooding due to shale, rock and an unknown tributary area, as much as there are no apparent easy solutions for drainage in the neighborhood it is up to the village how to handle this aspect. In response to his concern, EDP recommended a maintenance agreement between the new owner and the village, so it does seem that maintenance will be required. This was the issue presented to the Village Board, in which they do not wish to enter into an agreement to maintain a stormwater basin on private property.

Attorney Nikas summarized the above discussion with; this is an open issue for Mr. Jarrett, what can be done by EDP to design this project so that the Village does not have any responsibility to maintain a stormwater basin on private property in the event the landowner fails to do so? Attorney Nikas did not feel at this time there has been a suitable answer to this question. Mr. Ferguson stated the Village would have to take the landowner to court if they did not maintain it.

EDP and Jarrett Engineers have failed to reach an agreement at this point, with Village Engineer Tom Jarrett not willing to sign off on the proposal and EDP stating their proposal will work and is the best solution.

Attorney Nikas stated the board is entitled to approve or disapprove the project if EDP is able to convince the Village Engineer that this proposed stormwater area is the best solution for this project.

Board Member Breeyear asked if the new owner of this home takes on the maintenance, how much work is involved in that? Ed Russo stated the maintenance is very minimum and that is why they believe the Village should take it over, it's just mowing and cleaning it twice a year to keep any woody growth out of it.

Board Member Timms asked what the life expectancy of the stormwater catch basin would be. Mr. Ferguson stated that if properly maintained it should last the lifetime of the home. The only other maintenance that could occur with it, would be cleaning out some sediment if it builds up such as sand collecting in that area. Board Member Timms asked if this is the best option or the most financially feasible option for this project. Mr. Ferguson stated the only other option would be to obtain easements from numerous property owners, which was the solution discussed back in 2015 and this option would not be close to financially feasible for a two-lot subdivision. A brief discussion ensued regarding drainage and easements.

Chairman Hutchinson asked if the property had been surveyed. Mr. Russo stated that Russell Howard did do a survey on the property. Chairman Hutchinson stated it must have been determined what the volume of it is now as far as holding surface water. Mr. Ferguson stated he was uncertain as to if they ever calculated what the existing volume is there now. They looked at what drains to it and what was necessary for that stormwater event. Chairman Hutchinson stated the reason for his question was to determine if the existing volume of what it holds is equal, greater, or less than the volume of surface water to hold that. Mr. Ferguson stated he did not have that information. Chairman Hutchinson pointed out if it were less than, that is where the problem would be, but if it was equal to or greater than, that may be the answer Mr. Jarrett is looking for. Chairman Hutchinson asked if the surface volume was easily calculable. A discussion ensued.

Board Member Leland asked the question what the difference between the landowner is maintaining it and the Village maintaining it. Attorney Nikas explained that they are talking about a maintenance agreement where the landowner signs on and agrees to maintain the stormwater basin, which means, removing sand, debris, mowing and

so forth. If the landowner fails to do this then the Village can fine the landowner, can enforce it by doing it themselves and imposing fines. Board Member Leland asked does this include any infrastructure. Attorney Nikas stated nothing that is complex. Board Member Leland asked if it is more lawn type maintenance and Attorney Nikas explained she would have to ask Superintendent of Public Works, Mike Fiorillo the details of the maintenance. Discussion ensued.

Mr. Russo and Mr. Ferguson explained to Board Member Leland how the stormwater basin would work and about the testing they have done. The idea is for all the water to go this retention pond and make it better for drainage than what is currently there. They stated it would be more aesthetically pleasing to the area as well as the best solution for this project.

Board Member Breeyear said she is confused about the subdivision. Was this property subdivided before the existing home was sold? All the property was sold as one parcel to the new homeowner with a deed restriction for the subdivision to take place based upon the approval of this project. Board Member Timms stated she would like to see the deed restriction. Mr. Russo stated this project would fix the swamp issue, by building another home and creating the stormwater basin for the water to run to. In the event this proposal for subdivision to build another home is denied, the entire parcel known as 11-13 Fourth St. will remain as one parcel belonging to the current owner of the recent newly constructed home.

Chairman Hutchinson asked if there were any further questions or issues from the board. Attorney Nikas stated he did not believe there were any other SEQR issues other than this.

Chairman Hutchinson decided to table the meeting until they get more of an agreement from Tom Jarrett, Village Engineer. He would also like clarification as to the volume question as they should be accounting for their stormwater basin to have at least the same retention as the volume of water that is there now if not more. The board would like to be sure of that.

Public hearing will remain open for this proposal.

Upon motion by Board Member Santa Croce, seconded by Board Member Leland and carried the minutes of the May 24, 2021, Planning Board Meeting were approved as submitted.

There being no further business to come before the Board the meeting was adjourned at 7:17pm.

  
Deputy Clerk